

**BLUEPEARL VET, LLC; BLUEPEARL
WASHINGTON, LLC; AND BLUEPEARL
PRACTICE ENTITY, P.C., joint employers
collectively doing business as BLUEPEARL
SPECIALTY + EMERGENCY PET
HOSPITAL,**

Petitioner,

and

**NATIONAL VETERINARY
PROFESSIONALS UNION,**

Union.

I. INTRODUCTION

Pursuant to 102.67(j) of the National Labor Relations Board's Rules and Regulations, BluePearl Specialty + Emergency Pet Hospital ("BluePearl" or "the Employer"), makes this motion for the National Labor Relations Board ("NLRB" or "the Board") to stay the Decision and Order Clarifying Unit ("Decision") issued by the Regional Director of Region 19 on August 1, 2019, pending final determination of the Employer's Request for Review.

II. ARGUMENT

For the reasons set forth in BluePearl's Request for Review, the Regional Director's decision on substantial factual issues is clearly erroneous on the record and the error prejudicially affects the Employer's rights, and the Regional Director's decision raises a substantial question of law and policy because the Regional Director failed to apply Board precedent regarding the analysis and application of the Board's Section 2(11) test.

The Board recognizes the significance of statutory supervisors to employers and to the workplace. As the Board's then-General Counsel observed, when discussing the issue of rotating part-time supervisors after *Oakwood*:

Both management and unions must have agents and representatives whom they can trust. Finding part-time supervisors who truly serve in that capacity to be 2(11) supervisors solves the conflict of interest problem: management can demand their loyalty, and employees and labor unions do not have to fear supervisory involvement in their organizations.

"Guideline Memorandum Concerning *Oakwood Healthcare, Inc.*, 348 NLRB No.37 (2006), and Related Cases," G.C. Memorandum 07-05 (April 10, 2007), at 11.

Of course, the same observation would apply to resolving the supervisory status of any individual.

The Board's recognition of the significance of statutory supervisors, and their importance to an employer's management of the workplace, is especially relevant in the instant case, which involves the relatively new and evolving industry of veterinary medicine. The Employer operates a large, multi-specialty veterinary health care facility, which includes emergency, critical care and specialty departments in which supervisors and management work collaboratively with clinicians and employees to deliver seamless, clinical care to patients. The patients may be different, but the issues and concerns – and the life and death decisions that are made on a daily basis – are the same as those in acute care hospitals in human healthcare.

In a case that will have far-reaching implications as an early precedent in the industry, the Regional Director disregarded *Oakwood* and held that the Blood Bank Director and Shift Supervisor classifications are not statutory supervisors and are therefore properly included in the bargaining unit. In a case as important as this, the Board itself should have the opportunity to apply *Oakwood* in the context of this full-service veterinary hospital.

For these reasons and others, including but not limited to those set forth below, a Stay of the Decision pending final determination of the Employer's Request for Review is warranted under the particular circumstances of this case. If a Stay of the Decision is not granted:

1. The Employer will be improperly deprived of its representatives of management in numerous departments within the workplace.
2. The Employer will be prejudiced in its ability to manage and maintain patient care, including the supervisors' assignment of patients to staff.
3. The Employer will be prejudiced in its ability to make informed hiring decisions by the loss of the input and involvement of the supervisors.

4. The Employer will be prejudiced in its ability to evaluate and reward the supervisors' direct reports.
5. The Employer will be prejudiced in its ability to manage and control the workplace, enforce hospital policies, and, where necessary, recommend discipline
6. The Employer will be prejudiced in its ability to assign and direct work and manage the workload.
7. The Employer will be prejudiced in its ability to efficiently schedule staff, determine appropriate staffing levels and decide whether to change shifts or fill open shifts.
8. The Employer will be prejudiced by the sustained uncertainty as to the status of critical members of hospital department leadership, and the potential involvement of some of these individuals as members of the Union's bargaining committee.
9. The Employer will be prejudiced by being forced to accede to the Union's demand to bargain over terms and conditions of these individuals, or face the possibility of ongoing litigation over the issue, with the attendant waste, expense and disruption.
10. The individuals who are improperly moved into the bargaining unit by the Decision will be prejudiced by the likelihood that the Employer will be required to hire persons to replace them in their supervisory positions, which will no longer be available if the Board reverses the Regional Director's Decision.

The Board has recognized that employers must have representatives among employees, "whose interest in directing other employees' tasks aligns with management," and who will be engaged in "carrying out the interests of management in directing others even if they are contrary to employees' interests." Guideline Memorandum Concerning *Oakwood Healthcare, Inc.*, 348 NLRB No.37 (2006), and Related Cases," G.C. Memorandum 07-05 (April 10, 2007), at 5.

The Employer in this case will be improperly deprived of this essential right by the Regional Director's Decision, with consequences that will likely be profound but are as-yet unknown. Before the Employer, its employees and the patients they serve are subject to those consequences, a Stay of the Decision pending final determination of the Employer's Request for Review should be granted.

III. CONCLUSION

For the foregoing reasons, the Employer respectfully requests that the Board grant a Stay of the Decision pending final determination of the Employer's Request for Review.

DATED this 22nd day of August, 2019.

By: /s/ April Upchurch Fredrickson

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Oregon that on this day a true and accurate copy of the document to which this declaration is affixed was filed with the Office of Executive Secretary/National Labor Relations Board and upon the Regional Director of Region 19 using the NLRB e-filing system and was served by email upon the following:

Emily Maglio
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DATED this 22nd day of August, 2019.

/s/ April Upchurch Fredrickson